



October 22, 1999

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR99-3004

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129555.

The City of Midland (the "city") received a request for information regarding an incident history. You assert that certain portions of the information are excepted from disclosure pursuant to Health and Safety Code section 772.318 and the informer's privilege. We have reviewed the information you have submitted and considered the exception you claim.

You contend that the originating telephone numbers and addresses on a 911 report for this area are confidential pursuant to section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. As you raise this statute, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Thus, if the emergency communication district here is subject to section 772.318 as you claim, the originating telephone numbers and addresses on the Midland Police Department Incident History are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

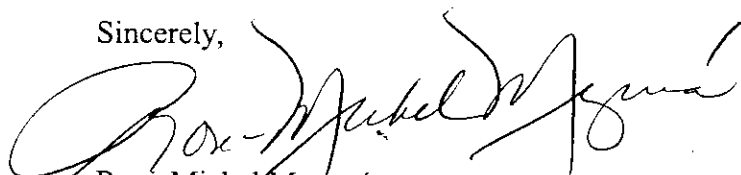
You also raise the "informer's privilege" to withhold portions of the requested information. Section 552.101 incorporates the "informer's privilege," which has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). In reviewing the documents submitted, it appears that the informants' identities are known to the individuals who are the subjects of the complaints in Incident Number P980505399 and Incident Number P98050577. Therefore, the information cannot be withheld under the informer's privilege and must be released.

We are resolving this matter with an informal letter ruling rather than with a published Open Records Decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 129555

Encl. Submitted documents

cc: Ms. Roxanne Weinzal
P. O. Box 4814
Midland, Texas 79701
w/o enclosures